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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/712,788

11/14/2000

Michael C. Finley

19109.0020U2

8889

23859 7590 10/20/2006

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EXAMINER

KNEPPER, DAVID D

ART UNIT

PAPER NUMBER

2626

DATE MAILED: 10/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/712,788	Applicant(s) FINLEY ET AL.	
	Examiner David D. Knepper	Art Unit 2626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 11-20 is/are rejected.
- 7) ☒ Claim(s) 9 and 10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

1. Applicant's correspondence filed on 26 Jul 2006 (Amendment, & Arguments) has been received and considered. Claims 1-20 are pending.

Claims

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-20 are rejected under 35 U.S.C. § 103 as being unpatentable over Chen (5,991,737).

As per claim 1, Chen teaches or suggests “facilitating a transaction with a person listening to transmitted audible content” with his automated consumer response to publicly broadcast information:

“detecting an electronic request transmitted from said request device...said request including at least a portion of said content” (suggested by his consumer transmitter 18, col. 2, lines 55-56 which allows the user to send a request and by his teaching in col. 4, lines 41-46 that his Content identification processor 34...stores the content that corresponds to each item of broadcast information);

“matching said content to said deliverable” (suggested by his utilizing pattern recognition, [to] identify the songs, col. 4, lines 53-54);

“monitoring the transmission between the request device and the remote source to ensure complete transmission of the electronic request” (his order processor communicates with content identification processor 34 to obtain the contents of the broadcast information specified in the order, with the consumer transmitter to provide feedback or request additional information indicating that the transmission is indeed monitored and that feedback will be provided as necessary if the request information is not complete; and

“providing said deliverable” (his fulfillment of an end product or service to the consumer, col. 3, lines 45-46).

It is noted that Chen does not explicitly teach details for “each request including at least a portion of said content”. However, he teaches that it is possible to store and recall data corresponding to broadcast information, col. 5, lines 50-51 and that broadcasts of songs may be matched utilizing pattern recognition, col. 4, lines 52-56 and teaches that the content will be stored in col. 4, lines 41-46 in that his Content identification processor 34...stores the content that corresponds to each item of broadcast information. It would have been obvious for a person having ordinary skill in the pertinent art, at the time the invention was made, to combine the broadcast storage and pattern recognition taught by Chen because Chen teaches that the order processor may be automated or manual...utilizing either touch tones or voice recognition... or an interactive voice response system, col. 4, lines 61-67 which teaches that it is obvious to provide a wide variety of order mechanisms requiring certain data to be stored and recognized. Thus, the

combination of storing and matching broadcasts of songs would have been obvious to facilitate ease of ordering as fairly suggested by Chen as noted above.

Claim 2: Receiving payment is inherent in the ordering process.

Claim 3: A remote location is obvious in view of his use of a cellular telephone, col. 2, lines 55-56.

Claim 4: “Obtaining profile information from a person...stored at a host site remote from said person” is taught by Chen in col. 4, lines 33-37 with his Fulfillment of an order can include a charge to a consumer account, which may be an account maintained by processing station 22 or an external account.

Claims 4-8 and 11-20 are rejected under similar arguments as applied to claims 1-3 above. It is clear that Chen teaches that a variety of transmitting and receiving mechanisms may be synchronized to allow manual or automatic transmission of necessary ordering information to include television, radio...tuning and current date and time, see col. 5, lines 23-55.

Claim 8: “...monitoring the transmission from the transmitter to ensure complete transmission of request from the request initiator to the remote service” (his order processor communicates with content identification processor 34 to obtain the contents of the broadcast information specified in the order, with the consumer transmitter to provide feedback or request additional information indicating that the transmission is indeed monitored and that feedback will be provided as necessary if the request information is not complete.

The applicant’s argument that Chen allows a request for a deliverable item without specifying the content of the broadcast information (col. 4, lines 16-17) is noted and serves to narrow the interpretation of claims as requiring both. However, Chen also teaches in col. 4, lines

41-50 that his content identification processor 34 will store (record) the content in order to perform pattern recognition. Therefore, Chen teaches that his system is flexible such that it is possible for his system to allow a person to order regardless of when the content is recorded and recognized based upon a record of successful pattern recognition. However, upon further review, it appears that claim 9 (as noted below) provides limitations requiring specific relationships between the timing of the recording and request for purchase which is not taught in the prior art.

4. Claims 9 and 10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art teaches that it is known to record audio and that at least part of its content can be recognized in combination with a request for a deliverable item such as a music CD that is directly related to the content. However, the prior art does not explicitly teach that a separate recording microphone must be utilized in combination with a processor that performs the steps of ensuring that the recording is continuously updated prior to a user request initiating the process which will enable a user to make a purchase ("buy task") of the desired item as specified in claim 9. To the contrary, the prior art (Chen) teaches that the timing of recording, recognition and a request by the user for purchase should be more flexible.

5. Some correspondence may be submitted electronically. See the Office's Internet Web site <http://www.uspto.gov> for additional information.

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Effective 14 January 2005, except correspondence for Maintenance Fees, Deposit Accounts (see 37 CFR 1.25(c)(4)), and Licensing and Review (see 37 CFR 5.1(c) and 5.2(c)), please address correspondence delivered by other delivery services (i.e. – Federal Express (Fed Ex), UPS, DHL, Laser, Action, Purolater, etc.) as follows:

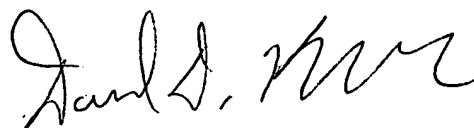
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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David D. Knepper whose telephone number is (571) 272-7607. The examiner can normally be reached on Monday-Thursday from 07:30 a.m.-6:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Hudspeth, can be reached on (571) 272-7843.

For the Group 2600 receptionist or customer service call (571) 272-2600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Inquiries regarding the status of submissions relating to an application or questions on the Private PAIR system should be directed to the Electronic Business Center (EBC) at 866-217-9197 (toll-free) between the hours of 6 a.m. and midnight Monday through Friday EST, or by email at ebc@uspto.gov. For general information about the PAIR system, see <http://pair-direct.uspto.gov>.



David D. Knepper
Primary Examiner
Art Unit 2626